Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address
COVENANT HEALTH SYSTEM
P O BOX 1201
LUBBOCK TX 79408

Carrier's Austin Representative Box
#54

Respondent Name
TEXAS MUTUAL INSURANCE CO

MFDR Date Received
JUNE 22, 2007

MFDR Tracking Number
M4-07-6939-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Taken From The *Table of Disputed Services*: "No Precertification"

Amount in Dispute: $42,738.10

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated July 17, 2007: "This dispute involves Texas Mutual's denial of payment for inpatient hospital stay absent preauthorization for date of service **12/7/2006 to 12/9/2006**. The requester billed **$42,738.10**; Texas Mutual paid **$0.00**. The requester believes it is entitled to **$42,738.10**. Texas Mutual denied the charges in dispute, an inpatient hospital stay for spinal surgery, for lack of pre-authorization. The requester did not request preauthorization from the carrier as required by DWC Rule 134.600 for items listed in DWC Rule 134.600 (h) (1)…The requester has not provided documentation of an emergency as defined in DWC Rule 133.1 (7)…The DWC-60 packet submitted by the requestor includes a Table of Disputed Services, copy of the bill, and an EOB from Texas Mutual. The provider has not submitted documentation of the exceptions for carrier liability as provided for in DWC Rule 134.600; therefore, it is this carrier's position that no reimbursement is due for the inpatient hospital admission for the spinal surgery rendered absent preauthorization approval. Texas Mutual also had a peer review performed to determine if the spinal surgery was due to an eminent situation, or could preauthorization have been safely requested. The results determined that preauthorization could have been requested. Given the above, Texas Mutual believes no payment is due."

Respondent's Supplemental Position Summary Dated September 8, 2011: "In its original response (Attachment) Texas Mutual explained the requestor did not receive preauthorization to admit the claimant and perform the surgical procedure…Further, a peer review of the admission found no evidence the admission was emergent. Texas Mutual believes those arguments are still valid and applicable to the instant dispute."

Responses Submitted by: Texas Mutual Insurance Company

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
December 7, 2006 through December 9, 2006	Inpatient Hospital Services	$42,738.10	$2,236.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.600, effective May 2, 2006, is applicable to the disputed services.
3. 28 Texas Administrative Code §133.2, effective May 2, 2006, defines a medical emergency.
4. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
5. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- CAC-62 – PAYMENT DENIED/REDUCED FOR ABSENCE OF, OR EXCEEDED, PRE-CERTIFICATION/AUTHORIZATION.
- 930 – PRE-AUTHORIZATION REQUIRED, REIMBURSEMENT DENIED.
- 891 – THE INSURANCE COMPANY IS REDUCING OR DENYING PAYMENT AFTER RECONSIDERATION.
- CAC-W4 – NO ADDITIONAL REIMBURSEMENT ALLOWED AFTER REVIEW OF APPEAL/RECONSIDERATION.

Issues

1. Did the disputed services require preauthorization?
2. Did the audited charges exceed $40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection…" 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement for the disputed services based upon reason codes “CAC-62 and 930.”

   28 Texas Administrative Code §134.600(c) states “The carrier is liable for all reasonable and necessary medical costs relating to the health care: (1) listed in subsection (p) or (q) of this section only when the following situations occur: (A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions).”

   28 Texas Administrative Code §133.2(3)(A) states “Emergency--Either a medical or mental health emergency as follows:
   (A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:
   (i) placing the patient's health or bodily functions in serious jeopardy, or

   (ii) serious dysfunction of any body organ or part.”

   The respondent states in the position summary that “The requester has not provided documentation of an emergency as defined in DWC Rule 133.1 (7)… it is this carrier’s position that no reimbursement is due for the inpatient hospital admission for the spinal surgery rendered absent preauthorization approval. Texas Mutual also had a peer review performed to determine if the spinal surgery was due to an eminent situation, or could preauthorization have been safely requested. The results determined that preauthorization could have been requested.”

   The respondent submitted a copy of a peer review dated March 10, 2007 from Dr. William C. Watters III, that states “the cervical spine surgery was necessary. However, preauthorization could have been requested. The patient had had the injury for several months and was showing no progression.” Dr. Watters also concurred that “The surgery performed was appropriate.”

   The requestor submitted a copy of Dr. Albert E. Telfeian’s examination report dated December 7, 2006 that found “His gait is severely unsteady. He is not able to heel and toe walk because of his unsteadiness. His reflexes are hyperreflexic, especially on the left side of the body. He has positive clonus on the left side and positive Hoffman sign bilaterally.”

   The December 7, 2006 MRI finds “Marked spinal stenosis is seen at C4-C5 and C5-C6 with abnormal signal in the cord from the midaspect of C4 to the upper aspect of C6, consistent with myelopathy. AP diameter of the canal at C4-C5 measures 5-6 mm and at C5-C6 measures 6-7 mm. Disk and spur can be seen at both of these levels with the predominate finding at C4-C5 being disk and predominant finding at C5-C6 being spur. Remainder of disks are unremarkable. There are reactive endplate changes at these levels.”

   The Division finds that due to the positive objective findings from the MRI and physical examination, and the claimant’s severely unsteady gait and pain, this admission meets the definition of a medical emergency per 28 Texas Administrative Code §133.2(3)(A). Therefore, preauthorization was not required per 28 Texas Administrative Code §134.600(c)(1)(A) for the disputed services.

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “…to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “…Audited charges are those charges which remain after a bill review by the insurance carrier has been performed…” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $42,738.10. The Division concludes that the total audited charges exceed $40,000.

3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals’ November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “…independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position statement states that “No Precertification.” This statement does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive in relation to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

4. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly

services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor's original nor it's supplemental position statement address how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).

5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements.* The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

   - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of $1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission…" The length of stay was two days. The surgical per diem rate of $1,118.00 multiplied by the length of stay of two days results in an allowable amount of $2,236.00.
   - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
   - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at $4,542.40.
   - Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement can be recommended.
   - 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (i) Magnetic Resonance Imaging (MRIs) (revenue codes 610-619)." A review of the submitted hospital bill finds that the requestor billed $3,000.43 for revenue code 610-MRI. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 610 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
   - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than $250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed $435.20/unit for Novolog (SSI) 100UN. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

   The division concludes that the total allowable for this admission is $2,236.00. The respondent issued payment in the amount of $0.00. Based upon the documentation submitted, additional reimbursement in the amount of $2,236.00 is recommended

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed $40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount,* and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of $2,236.00 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

		04/19/2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.